

FILED

MAR 1 1990

CLERK OF COURT
C. PhilippelliIN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

BURR-BROWN CORP.,)

Defendant.)

CIVIL ACTION NO.
CIV-89-594-TUC-RMBCLERK, U. S. DISTRICT COURT
DISTRICT OF ARIZONA
BY: _____ORDER

Plaintiff, the United States, has moved this Court for an Order entering the Consent Decree lodged with this Court on October 16, 1989.

After considering the Comments filed in this action, and the responses of the United States thereto, as well as the arguments set forth in the United States' Motion, the Court finds that entry of the proposed Decree is in the public interest.

Accordingly it is hereby ORDERED that the proposed Consent Decree in this action is hereby ENTERED as an order of this Court.

3/9/90

Richard M. Bully
UNITED STATES DISTRICT JUDGE

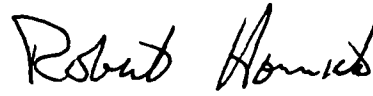
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CERTIFICATE OF SERVICE

I hereby certify that on March 6, 1990, I sent a copy of
the foregoing Motion to Enter Consent Decree by First Class Mail
to:

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Streich, Lang, Weeks & Cardon
2100 First Interstate Bank Plaza
100 West Washington
Phoenix, Arizona 85003-1897



ROBERT R. HOMIAK

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DISTRICT OF ARIZONA
BY Flippelli
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LODGED
OCT 16 1989
CLERK, U.S. DISTRICT COURT
BY: AF DISTRICT OF ARIZONA
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,

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BURR-BROWN CORPORATION

Defendant.

CIV 89 594 TUC

CIV NO. _____

CONSENT DECREE

RMB

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1 WHEREAS, the United States of America ("United States"), on
2 behalf of the Administrator of the United States Environmental
3 Protection Agency ("EPA"), has filed, concurrently with this Con-
4 sent Decree, a complaint in this matter pursuant to the Com-
5 prehensive Environmental Response, Compensation, and Liability
6 Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amend-
7 ments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100
8 Stat. 1613 (1986) ("CERCLA"), to compel Burr-Brown Corporation
9 ("Burr-Brown") to perform remedial actions and to recover all
10 response costs that have been and will be incurred by the United
11 States in response to releases and threatened releases of hazard-
12 ous substances from a facility as defined in Section 101(9) of
13 CERCLA, 42 U.S.C. § 9601(9), known as the Burr-Brown Corporation
14 Site (the "Site") located in Tucson, Arizona.

15 WHEREAS, pursuant to Section 122 of the CERCLA, 42
16 U.S.C. § 9622, Burr-Brown has stipulated and agreed to the making
17 and entry of this Consent Decree (hereinafter "Decree" or
18 "Consent Decree") prior to the taking of any testimony, based
19 upon the pleadings herein, without any admission of liability or
20 fault as to any allegation or matter arising out of the pleadings
21 of any party or otherwise.

22 WHEREAS, Burr-Brown agrees that settlement of this matter
23 and entry of this Consent Decree is made in good faith in an ef-
24 fort to avoid further expensive and protracted litigation,
25 without any admission as to liability for any purpose.
26

1 WHEREAS, each undersigned representative of the parties to
2 the Consent Decree certifies that he or she is fully authorized
3 to enter into the terms and conditions of this Decree and to
4 execute and legally bind such party to this document.

5 NOW THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as
6 follows:
7

8 I. JURISDICTION

9 The Court has jurisdiction over the subject matter of this
10 action and the parties to this Consent Decree pursuant to CERCLA,
11 42 U.S.C. § 9601 et seq. and 28 U.S.C. §§ 1331, 1345. Burr-Brown
12 shall not challenge the Court's jurisdiction to enter this Con-
13 sent Decree or to enforce, modify or terminate it. The Complaint
14 filed by the United States states a cause of action upon which,
15 if the allegations were proven, relief can be granted. The
16 parties agree and the Court finds that nothing herein constitutes
17 an admission of fact or law.
18

19 II. PARTIES

20 The parties to this Consent Decree are the United States and
21 the Burr-Brown Corporation.
22
23
24
25
26

1 III. BINDING EFFECT

2 A. This Consent Decree shall apply to and be binding
3 upon Burr-Brown, its successors and assigns, and upon the United
4 States. Burr-Brown shall provide a copy of this Consent Decree,
5 as entered, and all relevant additions to the Consent Decree, to
6 each person, including all contractors and subcontractors,
7 retained to perform the Remedial Design/Remedial Action
8 ("Remedial Action") contemplated by this Decree, and shall condi-
9 tion any contract for the Remedial Action on compliance with
10 this Consent Decree. "Remedial Action" is defined as the design,
11 construction and operation and maintenance of the groundwater ex-
12 traction and treatment system for the Site and all other tasks to
13 be performed by Burr-Brown as required by this Consent Decree.

14 B. Burr-Brown shall implement the Remedial Action in accor-
15 dance with the terms and schedules set forth in the Decree and
16 its Appendices. The Record of Decision for this Remedial Action
17 is set forth in Appendix A and incorporated herein by reference.
18 The Remedial Design/Remedial Action Work Plan is set forth in Ap-
19 pendix B and is also incorporated herein by reference.

20 C. This Consent Decree shall not affect any claims by or
21 against the State of Arizona arising out of or in connection with
22 the "Site" as that term is defined in Section IV, infra. The
23 State of Arizona and Burr-Brown reserve all defenses to any such
24 claims.

1 IV. SITE BACKGROUND

2 The Site is located in Township 15 South, Range 14 East,
3 Section 17 in Pima County, Arizona. The Site encompasses
4 property owned by Burr-Brown, property immediately contiguous to
5 the Burr-Brown property and the area between the northern bound-
6 ary of the plant site and Valencia Road. For purposes of this
7 Consent Decree, the "Site" is defined as the areal extent of
8 groundwater contamination that is the easternmost of the two
9 plumes which EPA has designated as "Area B" in its Feasibility
10 Study of the Tucson International Airport Area Superfund Site
11 (the "Superfund Site") and in the Record of Decision. The
12 Superfund Site was listed on the "Expanded Eligibility List," a
13 preliminary National Priorities List (NPL), on July 23, 1982. It
14 was proposed for inclusion on the original NPL on
15 December 30, 1982, and was included on the NPL on September 8,
16 1983.

17
18 V. PURPOSE

19 A. The purpose of this Consent Decree is to serve the
20 public interest by protecting the public health, welfare, and the
21 environment from releases and threatened releases of hazardous
22 substances at the Site by implementation of the Remedial Action.
23 The parties agree and the Court hereby finds that the Record of
24 Decision is consistent with the National Oil and Hazardous Sub-
25 stances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300.

1 B. The parties recognize that additional studies at the
2 Site may be necessary to determine, among other things, the ex-
3 tent of soil contamination at the Site. These additional studies
4 are not covered by this Consent Decree. Burr-Brown expressly
5 waives any right or ability to assert in a future proceeding that
6 the results of such future studies do not constitute new informa-
7 tion within the meaning of Section XXIX ("COVENANT NOT TO SUE").
8

9 VI. OBLIGATIONS FOR THE REMEDIAL ACTION

10 A. Burr-Brown shall finance and perform, at its expense, the
11 Remedial Action.

12 B. Notwithstanding any approvals which may be granted by
13 the United States or other governmental entities, Burr-Brown
14 shall remain liable for performance of the Remedial Action and
15 attainment of the performance criteria set forth in the ROD.
16 Neither this Consent Decree, nor any approvals of plans, reports,
17 or specifications by EPA shall be deemed to be a warranty that
18 the activities approved by EPA will result in the attainment of
19 the performance criteria set forth in the ROD.

20 C. Burr-Brown shall design, implement, and complete the
21 Remedial Action in accordance with the National Contingency Plan,
22 and in accordance with the standards, specifications, and
23 schedule of completion set forth in or approved by EPA pursuant
24 to Section VII, ("WORK TO BE PERFORMED").
25
26

1 D. Burr-Brown shall appoint a representative ("Project
2 Coordinator") to act on its behalf to execute the Remedial Ac-
3 tion.

4 E. In the event EPA determines that Burr-Brown has failed
5 to implement any provisions of the Remedial Action in a timely
6 manner, EPA may perform any and all portions of the Remedial Ac-
7 tion as EPA determines to be necessary. Except as necessary to
8 address an imminent and substantial endangerment to human health
9 or the environment, EPA will provide Burr-Brown's Project Coor-
10 dinator with 15 calendar days advance notice of its intent to
11 perform a portion of or all of the Remedial Action. If Burr-
12 Brown disagrees with the EPA's determination, Burr-Brown must,
13 within 10 calendar days of the notice, invoke the dispute resolu-
14 tion provisions of this Decree. Upon receipt of notification
15 that EPA intends to take over performance of a portion or all of
16 the Remedial Action, Burr-Brown's obligation to perform such work
17 shall terminate and, from and after receipt of the notice, Burr-
18 Brown shall not be liable for any stipulated penalties for
19 failure to complete such portion of the Remedial Action that is
20 taken over by EPA.

21 If EPA assumes performance of a portion or all of the
22 Remedial Action, Burr-Brown shall pay a penalty of three hundred
23 thousand dollars (\$300,000). Such penalty shall be paid 30 days
24 after EPA provides notice of intent to perform a portion or all
25 of the Remedial Action unless Burr-Brown invokes Dispute Resolu-
26 tion and shall be in addition to any stipulated penalties

1 that accrued prior to EPA's decision to take over the work. If
2 Burr-Brown invokes Dispute Resolution, Burr-Brown shall pay the
3 additional penalty, plus interest at the rate specified in 42
4 U.S.C. § 9607(a) running from the date of EPA's notice, at the
5 conclusion of Dispute Resolution if the result of the Dispute
6 Resolution process is that EPA performs a portion or all of the
7 Remedial Action.

8 In addition, if EPA performs all or a portion of the
9 Remedial Action after determining that Burr-Brown failed to
10 comply with its obligations under this Consent Decree, Burr-Brown
11 shall reimburse EPA for the costs it incurs in taking over the
12 Remedial Action within 60 calendar days of receipt of demand for
13 payment of such costs, except as to those costs which Burr-Brown
14 can show were incurred in an arbitrary and capricious manner or
15 in a manner inconsistent with the National Contingency Plan. Any
16 demand for payment made by EPA pursuant to this provision shall
17 include cost documentation that verifies that the claimed costs
18 were incurred and that the amount of the demand was properly cal-
19 culated. EPA may demand payment for costs under this section any
20 time after it incurs costs in performing the Remedial Action un-
21 der this section. Burr-Brown shall not be reimbursed from the
22 Fund or by a claim pursuant to Section XXXVI ("OTHER CLAIMS") for
23 any portion of the costs of the Remedial Action that EPA performs
24 pursuant to this section and for which EPA seeks reimbursement
25 from Burr-Brown.

1 F. All activities undertaken by Burr-Brown pursuant to this
2 Consent Decree shall be undertaken in accordance with the re-
3 quirements of all applicable State and federal laws, regulations,
4 and all "applicable" or "relevant and appropriate" federal and
5 state environmental requirements as identified by EPA. The
6 United States has determined that the obligations and procedures
7 authorized under this Consent Decree are consistent with its
8 authority under applicable law.

9 G. Pursuant to CERCLA, EPA has determined that no permits
10 are necessary for the onsite work conducted pursuant to § 106 of
11 CERCLA, including actions taken pursuant to this Consent Decree;
12 provided, however, that this does not apply to any license re-
13 quired by Title 45, Arizona Revised Statutes.

14
15 VII. WORK TO BE PERFORMED

16 A. Burr-Brown shall perform all work necessary to implement
17 the Remedial Action as defined by EPA's Record of Decision and
18 further defined pursuant to this Consent Decree.

19 B. All of the work to be performed pursuant to this
20 paragraph ("WORK TO BE PERFORMED") shall be performed by
21 qualified employees or contractors of Burr-Brown in accordance
22 with the schedule in Subparagraph D below.

23 C. The work to be performed shall consist of the design,
24 construction and operation of a groundwater extraction and treat-
25 ment system necessary to meet the requirements of the EPA Record
26 of Decision.

1 D. Burr-Brown shall submit the following deliverables pur-
2 suant to the schedule set forth in paragraph E.

3 1. Construction Phase Sample Plan, Contract Laboratory
4 Manual, and Final QA/QC Plan

5 The Construction Phase Sample Plan (CSP) shall
6 provide a detailed schedule for all sampling events planned prior
7 to the completion of construction of the groundwater extraction
8 and treatment system. These sampling events shall include resam-
9 pling of wells BB-1, BB-2, BB-3, (as identified in the Workplan)
10 and SF-1 and SF-3 (as identified in the Remedial Investigation/
11 Feasibility Study); sampling of monitoring wells installed by
12 Burr-Brown pursuant to this Consent Decree; and sampling of the
13 extraction well(s) installed by Burr-Brown pursuant to this Con-
14 sent Decree. The CSP shall specify the objectives of the sam-
15 pling events, including any chemical or hydrogeologic information
16 objectives. Furthermore, the CSP shall describe specifically any
17 sampling procedures or analytic procedures that are expected to
18 deviate from those specified in the QA/QC plan.

19 The contract laboratory QA/QC manual shall be sub-
20 mitted to EPA. The applicable laboratory QA/QC procedures will
21 be clearly indexed so as to indicate which procedures will be ap-
22 plicable and relevant to the particular analyses requested by
23 Burr-Brown pursuant to this Consent Decree. In addition, the
24 Final QA/QC Plan shall include the QA/QC Plan that was submitted
25 by Burr-Brown prior to the signing of this Consent Decree, with
26 the minor amendments made in response to EPA's comments.

1 2. Well Field Design/Data Analysis

2 The Well Field Design/Data Analysis shall provide an
3 analysis of (1) any analytical results obtained during the resam-
4 pling of wells BB-1, BB-2, BB-3, SF-1 and SF-3 and (2) any data
5 collected during the installation, development, pump testing,
6 sounding or chemical sampling of the monitoring wells installed
7 by Burr-Brown pursuant to this Consent Decree. This analysis
8 shall indicate (1) how new information (obtained or developed
9 since development of the Work Plan in Appendix B) has affected
10 the selection of a location for the originally proposed extrac-
11 tion well, (2) how new information has affected the original
12 proposal (as presented in Appendix B) to use only one extraction
13 well, (3) how new information has affected the original proposal
14 (as presented in Appendix B) to install only two additional
15 monitoring wells, and (4) how new information has affected as-
16 sumptions regarding sustainable groundwater extraction rates and
17 zones of capture.

18 3. 70% Design

19 The 70% Design shall provide analysis of chemical and
20 hydrogeologic information obtained during the installation,
21 development, pump testing, sounding or chemical sampling of the
22 extraction well(s) installed by Burr-Brown pursuant to this
23 Consent Decree. With respect to groundwater extraction, the 70%
24 Design shall at least indicate (1) how new information has im-
25 pacted the original proposal to use only one extraction well,
26

(2) how new information has impacted the original proposal to install only two additional monitoring wells and (3) how new information has impacted assumptions about sustainable extraction rates and zones of capture. With respect to the treatment system, the 70% Design shall at least specify (1) the sizes and types of all piping, valves and fixtures to be included as part of the treatment system; (2) the size and type of the air stripping column to be used, including the design capacity, air to water ratio and design treatment efficiency thereof; (3) any and all flow meters to be included as part of the treatment system, and (4) capacity and treatment efficiency for the cooling towers. The 70% design shall include a detailed schematic of the entire groundwater extraction system, accompanied by a written description of each point in the process from extraction to discharge to the sewer. The 70% Design shall reflect that almost all major decisions regarding equipment and process specifications have been made by documenting such decisions; EPA's comments are the remaining major input.

4. Final Design

The Final Design shall conform with the description for the 70% Design, except that the Final Design shall incorporate EPA's comments on the 70% Design. The Final Design is "final" in that no modifications should be necessary before initiating final system construction.

1 5. Start-up Operation and Maintenance (O & M) and
2 Monitoring Plan

3 The Start-up O & M and Monitoring Plan shall provide
4 monitoring schedules for (1) any chemical contaminant or
5 hydrogeologic monitoring to be performed during Burr-Brown's 30-
6 day system calibration period (provided for in Paragraph F of
7 this Section) and (2) any chemical or hydrogeologic monitoring to
8 be performed during the 5-month trial operation period (provided
9 for in Paragraph F of this Section). The Start-up O & M and
10 Monitoring Plan shall specify objectives for sampling and
11 analysis of groundwater from monitoring and extraction well(s)
12 and sampling and analysis for treatment system effluent. With
13 respect to gathering information (chemical or hydrogeologic) at
14 monitoring and extraction wells, the particular wells that shall
15 be sampled at a particular time shall be specified. Sampling
16 procedures or analytical procedures that are expected to deviate
17 from the QA/QC Plan shall be specified. In the case of exceeding
18 the primary MCLs for contaminants that can be identified by U.S.
19 EPA Method 601, the Start-up O & M and Monitoring Plan shall
20 specify how the monitoring schedule will be modified to (1)
21 facilitate bringing the system back within specifications and (2)
22 accurately document when the system is and is not in compliance.

23 The Start-up O & M and Monitoring Plan shall describe
24 in detail procedures and other steps that will be implemented by
25 Burr-Brown in order to ensure that all equipment included in
26

1 the groundwater extraction and treatment system continues to
2 operate according to specification. The procedures described
3 shall include, but shall not necessarily be limited to, (1)
4 scheduled visual inspections, (2) scheduled cleaning and/or back-
5 flushing and (3) the use of any chemical additives for corrosion
6 or pH control. The Start-up O & M and Monitoring Plan shall in-
7 clude a description of procedures to be implemented in the event
8 that system defects or other problems are encountered during
9 O & M activities. Burr-Brown shall comply with the Start-up O &
10 M and Monitoring Plan throughout the period of operation preced-
11 ing the Official Calibration and Start-up Statement.

12 6. Final System Construction

13 Final System Construction shall be the construction
14 and installation of all piping and equipment, pursuant to the
15 Final Design, such that groundwater extraction and treatment can
16 commence. Burr-Brown shall notify the EPA in writing that the
17 Final System Construction is completed.

18 7. Long-Term O & M and Monitoring Plan

19 The Long-Term O & M and Monitoring Plan shall conform
20 with the description for the Start-up O & M and Monitoring Plan,
21 except that the Long-Term O & M and Monitoring Plan shall address
22 O & M and monitoring to be performed during the period of opera-
23 tion subsequent to the Official Calibration and Start-up State-
24 ment. Burr-Brown shall comply with the Long-Term O & M and
25 Monitoring Plan throughout the life of the project.

1 8. Official Calibration and Start-up Statement

2 The Official Calibration and Start-up Statement shall
3 consist of a written statement by Burr-Brown that the groundwater
4 extraction system has been calibrated and that, provided that the
5 Long-Term O & M and Monitoring Plan is complied with, the system
6 should function according to specification. Based upon the
7 6-month system start-up period, the Official Calibration and
8 Start-up Statement shall specify any changes in expected flow
9 rate and treatment efficiency as compared to the Final Design.

10 E. Schedule

11	<u>EVENT or ACTIVITY</u>	<u>SCHEDULE for COMPLETION</u>
12	1. Construction Phase Sample	Within 15 working days of
13	Plan, Contract Laboratory	Consent Decree (CD) entry
	Manual, and Final QA/QC Plan	
14	2. Well Field Design/Data	Within 95 working days of CD
15	Analysis	entry
16	3. 70% Design	Within 165 working days of CD
		entry
17	4. Final Design	Within 20 working days of receipt
18		of EPA's comments on the 70%
19		Design or within 205 working days
20		of CD entry, whichever is later
21	5. Start-up O & M and	Within 70 working days of EPA
	Monitoring Plan	approval of the Final Design or
		within 275 working days of CD
		entry, whichever is later
22	6. Final System Construction	Within 90 working days of EPA
23		approval of the Final Design or
24		within 295 working days of CD
		entry, whichever is later
25	7. Long-Term O & M and	Within 105 working days of Final
26	Monitoring Plan	System Construction or within 400
		working days of CD entry, which-
		ever is later

1 8. Official Calibration
2 and Start-up Statement
3

Within 125 working days of Final
System Construction or within 420
working days of CD entry, which-
ever is later

4 F. System Performance

5 1. Following completion of groundwater extraction and
6 treatment system construction, the system shall be operated for a
7 6-month system start-up period, consisting of thirty (30) days of
8 operation for system calibration followed by five (5) months of
9 trial operation. Upon Burr-Brown's submission and EPA approval
10 of the Official Calibration and Start-up Statement (Subparagraph
11 D.8 above), the system is fully operational and shall be subject
12 to the system performance standards prescribed below.

13 2. The groundwater extraction and treatment system
14 shall include extraction of groundwater as is necessary to con-
15 trol the migration of volatile chemical contaminants in the
16 groundwater at the Site.

17 3. The groundwater extraction and treatment system
18 shall restore groundwater quality at the Site by reducing chemi-
19 cal contaminant concentrations in groundwater at the Site to the
20 levels listed under Subparagraph F.4 below.
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1 4. The groundwater extraction and treatment system
2 shall treat extracted groundwater to levels not to exceed the
3 concentrations listed below:

4 <u>Chemical</u>	<u>MCL (µg/l)</u>
5 Carbon tetrachloride	5
6 1,4-Dichlorobenzene	75
7 1,2-Dichloroethane	5
8 1,1-Dichloroethylene	7
9 1,1,1-Trichloroethane	200
10 Trichloroethylene	5
11 Vinyl Chloride	2

12
13 5. Burr-Brown shall demonstrate treatment system ef-
14 fluent quality by implementing a sampling and analysis of the
15 treatment system effluent as outlined below.

16 a. Burr-Brown shall sample the treatment system ef-
17 fluent on the first four consecutive working days of each calen-
18 dar quarter.

19 b. Burr-Brown shall have the first treatment system
20 effluent sample of each calendar quarter analyzed by EPA Method
21 601 with a 3 to 5-day turnaround.

22 c. If analyses pursuant to Subparagraph 5.b above
23 indicate levels of contamination above those listed in Sub-
24 paragraph 4 above, Burr-Brown shall have the remaining treatment
25 system effluent samples for that calendar quarter analyzed by EPA
26 Method 601, again with 3 to 5-day turnaround on the analyses.

1 6. In implementing the measures set forth in Sub-
2 paragraph 5 above, if analyses indicate that any two of the four
3 samples of the treatment system effluent for any particular
4 calendar quarter exceed the levels listed in Subparagraph 4
5 above, Burr-Brown shall implement the corrective measures listed
6 below.

7 a. Burr-Brown shall, within 48 hours of its iden-
8 tification of two samples with chemical contaminant levels above
9 those listed in Subparagraph 4, notify the EPA Project Coor-
10 dinator orally that the levels listed in Subparagraph 4 have been
11 exceeded. Burr-Brown shall provide EPA with written notification
12 of such exceedence within 5 working days.

13 b. Within 10 working days of Burr-Brown's written
14 notification, Burr-Brown shall (1) identify and report to the EPA
15 Project Coordinator the cause of the treatment system's inability
16 to meet the treatment levels set forth in Subparagraph 4 and
17 (2) report to the EPA Project Coordinator plans for improving the
18 system's performance so as to meet the treatment levels set forth
19 in Subparagraph 4.

20 c. Within 20 working days of notifying EPA of its
21 plans to improve the treatment system's performance, Burr-Brown
22 shall implement its plan.

23 7. Beginning with the 36th working day subsequent to
24 Burr-Brown's identification of two samples with chemical con-
25 taminant levels above those listed in Subparagraph 4, Burr-Brown
26 shall be liable for stipulated penalties pursuant to Section

1 XXII.D unless, during the intervening 35-day period, Burr-Brown
2 can demonstrate treatment standard compliance. Treatment stan-
3 dard compliance shall be demonstrated when each of four treatment
4 plant effluent samples, taken on consecutive calendar days, indi-
5 cates chemical contaminant levels at or below those listed in
6 Subparagraph 4.

7
8 VIII. REPORTING AND APPROVALS/DISAPPROVALS

9 A. Monthly Progress Reports

10 1. Burr-Brown shall provide written progress reports to
11 EPA on a monthly basis. These progress reports shall include:

12 a. a description of all actions taken during the
13 month being reported to comply with this Consent Decree, includ-
14 ing a general description of Remedial Action activities commenced
15 or completed during the month being reported;

16 b. a compilation of all data generated during the
17 month being reported provided that such data is in the possession
18 of Burr-Brown five working days prior to the time the monthly
19 progress report is due. If the data is not in the possession of
20 Burr-Brown five days prior to the time the monthly progress
21 report is due, Burr-Brown shall indicate in the monthly report
22 that the data was generated during the month being reported and
23 that the compilation of the data will be submitted in the next
24 monthly report;

1 c. a description of Remedial Action activities
2 projected to be commenced or completed during the next reporting
3 period, and any problems that have been encountered or are an-
4 ticipated by Burr-Brown in commencing or completing the Remedial
5 Action activities.

6 These progress reports shall be submitted to EPA,
7 postmarked by the 10th of each calendar month, for work done the
8 preceding month and planned for the current month.

9 2. If a submitted progress report is substantially
10 deficient, or if Burr-Brown fails to submit any progress report
11 in accordance with the schedule set forth above, Burr-Brown shall
12 be considered to be in violation of this Consent Decree and sub-
13 ject to stipulated penalties as governed by Section XXII of this
14 Consent Decree.

15 B. Other Reports, Plans, and Other Items

16 1. Any reports, plans, specifications (including
17 discharge or emission limits), schedules, appendices, and attach-
18 ments required by this Decree are, upon approval by EPA, incor-
19 porated into this Decree. Any noncompliance with such EPA
20 approved reports, plans, specifications (including discharge or
21 emission limits), schedules, appendices, and attachments shall
22 be considered a failure to comply with this Decree and subject
23 to stipulated penalties as governed by Section XXII of this
24 Decree. Any such determination of non-compliance with which
25 Burr-Brown disagrees shall be deemed a dispute subject to the
26 provisions of Section XXIII ("DISPUTE RESOLUTION").

1 2. If EPA disapproves any plans, reports (other than
2 monthly progress reports, which are covered by Section VIII(A),
3 above), or other items required to be submitted to EPA for ap-
4 proval pursuant to Section VII ("WORK TO BE PERFORMED"), and Sec-
5 tion X ("QUALITY ASSURANCE/QUALITY CONTROL"), Burr-Brown shall
6 have 10 working days (or such other time as the parties agree is
7 reasonably necessary to complete the required task) from the
8 receipt of such disapproval to correct any deficiencies and
9 resubmit the plan, report, or item for EPA approval.

10 3. Any disapprovals by EPA shall include an explana-
11 tion of why the plan, report, or item is being disapproved, in-
12 cluding the technical and legal basis therefor.

13 4. Burr-Brown must address each of EPA's comments and
14 resubmit to EPA the previously disapproved plan, report, or item
15 with the required changes within the deadline set forth herein.

16 5. If any plan, report, or item is substantially defi-
17 cient after resubmission, Burr-Brown shall be deemed to be in
18 violation of this Decree and subject to stipulated penalties as
19 governed by Section XXII of this Consent Decree. Any such deter-
20 mination of non-compliance with which Burr-Brown disagrees shall
21 be deemed a dispute subject to the provisions of Section XXIII
22 ("DISPUTE RESOLUTION").

1 IX. WORKER HEALTH AND SAFETY PLAN

2 The Worker Health and Safety Plan that has been prepared by
3 Burr-Brown is included in Appendix B. Any revisions to such
4 Worker Health and Safety Plan shall satisfy the requirements of
5 29 CFR Part 1910.120 and EPA's Standard Operating Safety Guides.
6

7 X. QUALITY ASSURANCE/QUALITY CONTROL

8 A. Burr-Brown shall submit to EPA for approval, as an appen-
9 dix to the Final Design, a Quality Assurance/Quality Control Plan
10 for Remedial Construction activities. The Remedial Construction
11 QA/QC Plan shall, where applicable, be prepared in accordance
12 with current EPA guidance, Interim Guidelines and Specifications
13 for Preparing Quality Assurance Project Plans, QAMS-005/80. Ad-
14 ditionally, the Remedial Construction QA/QC Plan shall include a
15 description of all procedures and protocols necessary for the im-
16 plementation of trial test(s) of the pumping and treatment system
17 used as part of the Site cleanup. The Remedial Construction
18 QA/QC Plan shall include a description of the mechanism used to
19 verify that the pumping and treatment process is operating within
20 acceptable limits. Upon approval and notice by EPA to Burr-
21 Brown, Burr-Brown shall implement the Plan.

22 B. Burr-Brown shall use QA/QC procedures in accordance with
23 the QA/QC plans submitted pursuant to this Decree, and shall
24 utilize standard EPA chain of custody procedures, as documented
25 in National Enforcement Investigations Center Policies and Proce-
26

dures Manual as revised in May 1986 and the National Enforcement Investigations Center Manual for the Evidence Audit published in September 1981, for all sample collection and analysis activities. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Decree, Burr-Brown shall:

1. Ensure that all contracts with laboratories utilized by Burr-Brown for analysis of samples taken pursuant to this Consent Decree provide for access of EPA personnel and EPA authorized representatives to assure the accuracy of laboratory results related to the Site.

2. Ensure that laboratories utilized by Burr-Brown for analysis of samples taken pursuant to this Consent Decree perform all analyses according to EPA methods or methods deemed in advance satisfactory to EPA. Accepted EPA methods are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis" dated July 1985.

3. Ensure that all laboratories utilized by Burr-Brown for analysis of samples taken pursuant to this Decree participate in an EPA or EPA equivalent QA/QC program. As part of the QA/QC program and upon request by EPA, such laboratories shall perform at their expense analyses of samples provided by EPA to demonstrate the quality of each laboratory's data. EPA may provide to each laboratory for analysis a maximum of four samples per year per analytical combination (e.g., four aqueous samples

1 for analysis by gas chromatography/mass spectrometry, four
2 soil/sediment samples for analysis by gas chromatography/mass
3 spectrometry).

4
5 XI. PROJECT COORDINATORS

6 A. By the effective date of this Consent Decree, EPA
7 and Burr-Brown shall each designate Project Coordinators to
8 monitor the progress of the Remedial Action and to coordinate
9 communication between EPA and Burr-Brown. The EPA Project Coor-
10 dinator shall have the authority vested in the On-Scene Coor-
11 dinator by 40 C.F.R. § 300 et seq., 50 Fed. Reg. 47912 (Nov. 20,
12 1985), including such authority as may be added by amendments to
13 40 C.F.R. § 300, as well as the authority to ensure that the
14 Remedial Action is performed in accordance with all applicable
15 statutes, regulations, and this Consent Decree. The EPA Project
16 Coordinator, or his designee, shall also have the authority to
17 require a cessation of the performance of the Remedial Action or
18 any other activity at the Site that, in the opinion of the EPA
19 Project Coordinator, may present or contribute to an imminent and
20 substantial endangerment to human health, welfare, or the en-
21 vironment or cause or threaten to cause the release of hazardous
22 substances from the Site. In the event the EPA Project Coor-
23 dinator suspends the Remedial Action or any other activity at the
24 Site, the parties may extend the compliance schedule of this Con-
25 sent Decree as appropriate for the minimum period of time neces-
26 sary to perform the Remedial Action, but in no event longer than

1 the time of the suspension of Remedial Action or other ac-
2 tivities. Should Burr-Brown desire to extend the compliance
3 schedule pursuant to this paragraph, Burr-Brown shall propose and
4 the United States shall determine the length of any extension. A
5 disagreement over the length of such an extension is a dispute to
6 be resolved through Dispute Resolution. If the EPA Project Coor-
7 dinator suspends the Remedial Action or any other activity for
8 any of the reasons set forth in this Paragraph A and those
9 reasons are due to the acts or omissions of Burr-Brown or the
10 Contractor(s), then Burr-Brown may be liable, at EPA's discre-
11 tion, for stipulated penalties in accordance with Section XXII
12 (Stipulated Penalties). Any extension of the compliance schedule
13 shall be at EPA's discretion but shall be subject to Dispute
14 Resolution procedures. The Project Coordinators do not have the
15 authority to modify in any way the terms of this Decree, includ-
16 ing Attachment A or any design or construction plans. The ab-
17 sence of the EPA Project Coordinator from the Site shall not be
18 cause for stoppage of the work. EPA and Burr-Brown may change
19 their respective Project Coordinators by notifying the other
20 party in writing at least fourteen (14) calendar days prior to
21 the change.

22 B. Burr-Brown's Project Coordinator may assign other
23 representatives, including other contractors, to serve as a Site
24 representative for oversight of performance of daily operations
25 during Remedial Action.

1 C. The EPA Project Coordinator may assign other repre-
2 sentatives, including other EPA employees or contractors, to
3 serve as a Site representative for oversight of performance of
4 daily operations during the Remedial Action. Such representa-
5 tives do not have the powers of the Project Coordinator to re-
6 quire a cessation of the performance of the Remedial Action or
7 any other activity at the Site.

8 D. During the Remedial Action, the Project Coor-
9 dinators shall, whenever possible, operate by consensus. The
10 Project Coordinators shall attempt to resolve disputes informally
11 through good faith discussion of the issues. Each Project Coor-
12 dinator shall be responsible for assuring that all communications
13 from the other are appropriately disseminated and processed.

14 E. The Regional Administrator for EPA Region IX or his
15 designee shall have the authority to extend the time period for
16 implementation or completion of an item of Work described in Sec-
17 tion VII ("WORK TO BE PERFORMED") of this Consent Decree without
18 need for modification of this Consent Decree or the imposition of
19 stipulated penalties for each event or occurrence for which the
20 EPA and Burr-Brown Project Coordinators agree that such extension
21 is necessary. The period of time for such extension shall be at
22 the discretion of the Regional Administrator. Extensions of time
23 shall be documented in writing.

1 XII. SITE ACCESS

2 A. To the extent that access to or easements over property
3 other than the site is required for the proper and complete per-
4 formance of this Decree, Burr-Brown shall use its best efforts to
5 obtain access agreements from the present owners or those persons
6 who have control within 60 calendar days of the effective date of
7 this Consent Decree. Best efforts shall include the payment of
8 reasonable sums to obtain access. Site access agreements shall
9 provide reasonable access to Burr-Brown, the contractor(s), the
10 United States, EPA, the State, and their representatives. Burr-
11 Brown shall notify EPA within twenty-one (21) calendar days from
12 the effective date of this Consent Decree if it is encountering
13 significant difficulties in obtaining such agreements. In the
14 event that site access agreements are not obtained within the 60
15 day period, Burr-Brown shall notify EPA within 65 calendar days
16 of the effective date of this Consent Decree regarding both the
17 lack of, and efforts to obtain, such agreements. Inability to
18 obtain a Site access agreement, if Burr-Brown has otherwise com-
19 plied with the requirements of this paragraph, shall constitute a
20 force majeure and shall be subject to the provisions of Section
21 XXIV ("FORCE MAJEURE"). In the event EPA must obtain site access
22 on behalf of Burr-Brown, Burr-Brown shall reimburse EPA for all
23 costs (including attorneys fees) reasonably incurred. Such reim-
24 bursement shall be made within thirty (30) days of EPA's demand
25 therefor.

1 B. During the effective period of this Decree, the EPA, the
2 State, and their representatives, including contractors, shall
3 have access at reasonable times to the Site and any contiguous
4 property owned or controlled by Burr-Brown for purposes of con-
5 ducting any activity authorized by this Decree, including but not
6 limited to:

- 7 1. Monitoring the progress of activities taking
8 place;
- 9 2. Verifying any data or information submitted to
10 EPA;
- 11 3. Conducting investigations relating to con-
12 tamination at or near the site;
- 13 4. Obtaining samples at the site; and
- 14 5. Inspecting and copying records, operating
15 logs, contracts, or other documents utilized to as-
16 sess Burr-Brown's compliance with the Decree.

17 C. In the event Burr-Brown believes that any such
18 records, operating logs, contracts or other documents are
19 privileged, such documents shall be segregated and withheld from
20 inspection. A list identifying such alleged privileged
21 documents and the basis for withholding them as privileged shall
22 be provided to EPA within seven (7) days after EPA or other
23 authorized parties conduct an inspection. Any disagreement con-
24 cerning the propriety of the asserted privilege claim shall be
25 deemed a dispute subject to the provisions of Section XXIII
26 ("DISPUTE RESOLUTION").

1 D. Subject to Section 104(e)(7) of CERCLA, Burr-Brown
2 reserves the right to assert claims for confidential business in-
3 formation. For each such claim, Burr-Brown shall clearly mark
4 each document as confidential and release the document to the
5 inspector. Any such claim shall be subject to EPA's confiden-
6 tiality determination procedure set forth at 40 C.F.R. Part 2.

7 E. Any person obtaining access pursuant to this provision
8 shall notify the Burr-Brown Project Coordinator or his designee
9 upon their arrival before proceeding farther and shall comply
10 with all applicable provisions of the Worker Health and Safety
11 Plan as submitted in the work plans required by this Decree and
12 reviewed by EPA.

13 F. Notwithstanding the foregoing, EPA expressly reserves all
14 access rights that it may have under the Resource Conservation
15 and Recovery Act (RCRA) and CERCLA.

16
17 XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

18 Burr-Brown shall demonstrate its ability to complete the
19 Remedial Action and to pay all claims that arise from the perfor-
20 mance of the Remedial Action by obtaining, and presenting to EPA
21 for approval within 30 calendar days after the effective date of
22 this Decree, one of the following items: 1) performance bond; 2)
23 letter of credit; or 3) guarantee by a third party. EPA may dis-
24 approve the financial assurance mechanism presented if it does
25 not provide adequate assurance that Burr-Brown is able to pay for
26 the Remedial Action. In lieu of any of the three items listed

1 above, Burr-Brown may present to EPA, within 20 calendar days
2 after the effective date of this Decree, internal financial in-
3 formation sufficient to satisfy EPA that Burr-Brown has suffi-
4 cient assets to make it unnecessary to require additional as-
5 surances. No later than 90 calendar days after receipt of the
6 information, EPA shall make a determination of the adequacy of
7 the financial assurance and communicate that determination to
8 Burr-Brown. If Burr-Brown relies on internal financial informa-
9 tion for financial assurance, Burr-Brown shall submit audited
10 financial reports annually and submit unaudited reports quar-
11 terly. If EPA determines the financial assurances to be inade-
12 quate, Burr-Brown shall obtain one of the three other financial
13 instruments listed above within 30 calendar days of such EPA
14 determination or, if the Dispute Resolution in Section XXIII is
15 invoked, within 30 calendar days of a Court decision upholding
16 EPA's position.

17 18 XIV. SITE ACCOUNT

19 In the event Burr-Brown relies on internal financial infor-
20 mation for financial assurance, Burr-Brown shall maintain an ac-
21 counting reserve for a loss contingency in its records in an
22 amount which will be adequate to pay for such Remedial Actions as
23 are scheduled in the subsequent quarter. Starting 30 days after
24 the effective date of this Consent Decree, Burr-Brown shall quar-
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terly submit an account statement to EPA demonstrating that the accounting reserve is adequate to ensure performance of Burr-Brown's Consent Decree obligations for the following quarter.

XV. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

All actions required to be taken pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable local, state and federal laws, regulations and permitting requirements, in accordance with CERCLA as amended, and Appendix A to this Consent Decree.

XVI. SUBMISSION OF DOCUMENTS, SAMPLING, AND ANALYSIS

A. Burr-Brown shall submit a quality assurance report to EPA on a quarterly basis on January 12th, April 12th, July 12th, and October 12th of each year. This report shall contain information that demonstrates that Burr-Brown is complying with Section X ("QUALITY ASSURANCE/QUALITY CONTROL") of this Consent Decree and the QA/QC Plans submitted pursuant to this Decree.

B. Any analytical or design data generated or obtained by Burr-Brown that are related to the Site shall be provided to EPA within seven days of any request by EPA for such data, provided that such data is in the possession of Burr-Brown at the time of EPA's request and as soon thereafter as is reasonably possible in the event that such data is not in Burr-Brown's possession at the time of the request.

1 C. EPA employees and EPA's authorized representatives shall
2 have the right to take one split of each sample obtained by
3 Burr-Brown or anyone acting on Burr-Brown's behalf at the Site
4 during the implementation of the Remedial Action.

5 D. During the design, construction, and initial operation
6 phases of the Remedial Action, Burr-Brown shall notify the EPA
7 Project Coordinator or his designee verbally as soon as possible
8 but in no event less than seven days prior to any sampling con-
9 ducted by Burr-Brown or anyone acting on its behalf. Burr-Brown
10 shall require by contract and use its best effort to ensure that
11 samples shall be retained and disposed of by analytical
12 laboratories in accordance with EPA's customary contract proce-
13 dures for sample retention. If a laboratory fails to retain and
14 dispose of samples as required by its contract with Burr-Brown,
15 the parties will confer to determine whether the laboratory
16 should continue to perform the analytical work required by the
17 Remedial Action and this Consent Decree. At EPA's written re-
18 quest stating the reasons therefor, Burr-Brown shall discontinue
19 use of the laboratory.

20 Burr-Brown need not provide EPA with notice of routine
21 sampling relating to the operation of the treatment system.
22 Prior to commencement of operation of the treatment system,
23 however, Burr-Brown shall provide EPA with a schedule for all
24 routine sampling relating to the operation of the treatment sys-
25 tem. Burr-Brown shall notify EPA in writing ten (10) days in ad-
26 vance of any changes in the routine sampling schedule. Burr-

1 Brown shall obtain verbal EPA approval from the EPA Project Coor-
2 dinator in advance of any changes in the routine treatment system
3 sampling that Burr-Brown deems necessary as a result of unex-
4 pected conditions. Within 72 hours of such changes, Burr-Brown
5 shall submit in writing to EPA a detailed description of the un-
6 expected conditions that Burr-Brown believes warranted the
7 changes and a detailed description of the changes themselves.
8 Burr-Brown shall, in addition, provide EPA with the results of
9 analyses of such sampling when the results become available.

10 E. All data, factual information, and documents submitted
11 by Burr-Brown to EPA and the State pursuant to this Consent
12 Decree shall be subject to public inspection. Except as provided
13 in paragraph XVI(F) below, Burr-Brown may assert a claim of busi-
14 ness confidentiality covering all or part of the information
15 provided in connection with this Consent Decree in accordance
16 with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Any
17 such claim shall be subject to EPA's confidentiality determina-
18 tion procedures set forth at 40 C.F.R. Part 2.

19 F. Burr-Brown shall not assert a claim of confidentiality
20 regarding any information specified under Section 104(e)(7)(F)(i)
21 through (viii) of CERCLA, 42 U.S.C. § 9604(e)(7)(f)(i)-(viii).
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1 XVII. RETENTION OF RECORDS

2 Burr-Brown shall preserve and retain all records and docu-
3 ments now in its possession or control that relate in any manner
4 to the Site, regardless of any document retention policy to the
5 contrary, for six years after the completion of the Remedial Ac-
6 tion or termination of this Consent Decree, whichever is later.

7 Until completion of the Remedial Action and termination of
8 this Consent Decree, Burr-Brown shall preserve, and shall in-
9 struct its Contractor, its Contractor's subcontractors, and
10 anyone else acting on its behalf at the Site to preserve (in the
11 form of originals or exact copies, or in the alternative,
12 microfiche of all originals) all records, documents and informa-
13 tion of whatever kind, nature, or description relating to the
14 performance of the Remedial Action at the Site. Upon the comple-
15 tion of the Remedial Action, copies of all such records, docu-
16 ments, and information shall be delivered to the EPA Project
17 Coordinator.

18
19 XVIII. RESPONSE AUTHORITY

20 Nothing in this Consent Decree shall be deemed to limit the
21 response authority of EPA under Section 104 of CERCLA, 42 U.S.C.
22 § 9604, and under Section 106 of CERCLA, 42 U.S.C. § 9606, or
23 under any other federal response authority, except to the extent
24 that Burr-Brown has a Covenant Not to Sue under Section XXIX
25 ("COVENANT NOT TO SUE"). This Section may not be used to amend
26 the Remedial Action except as authorized by CERCLA.

1 XIX. REIMBURSEMENT OF COSTS

2 Within 90 days of the effective date of this Consent
3 Decree, Burr-Brown shall pay to the Hazardous Substance Superfund
4 the amount of One Hundred Seventy-Five Thousand Dollars
5 (\$175,000), as reimbursement of all response and oversight costs
6 incurred by EPA associated with this Site up to the effective
7 date of the Consent Decree. At the end of each calendar year,
8 EPA shall submit to Burr-Brown an accounting of all response and
9 oversight costs incurred by the United States with respect to
10 this Consent Decree. Failure to include all relevant response
11 costs in the submittal at the end of any particular calendar year
12 will not preclude the EPA from submitting such costs in any sub-
13 sequent year.

14 Oversight costs incurred by the United States include, but
15 are not limited to, time and travel costs of EPA employees,
16 agents and contractors, compliance monitoring in the field,
17 analysis of samples, inspection of Remedial Action activities,
18 legal and technical review of deliverables required by this Con-
19 sent Decree, and tracking and enforcement of Burr-Brown's com-
20 pliance with the terms of this Decree.

21 Within 30 calendar days of receipt of each accounting,
22 Burr-Brown shall remit a check for the amount of those costs made
23 payable to the Hazardous Substance Superfund unless prior to that
24 time Burr-Brown invokes Dispute Resolution. In order to prevail
25 in Dispute Resolution, Burr-Brown shall demonstrate either that
26 EPA did not incur the oversight cost demanded or that such costs

1 were incurred in a manner inconsistent with the NCP. Any payment
2 made pursuant to this paragraph shall not constitute an admission
3 by Burr-Brown of any liability to EPA or any other person or
4 agency. Checks should specifically reference the identity of the
5 site and be addressed to:

6
7 U.S. Environmental Protection Agency -- Region 9
8 Attn: Superfund Accounting
9 P.O. Box 360863M
Pittsburgh, PA 15251

10 A copy of the transmittal letter shall be sent to the EPA
11 Project Coordinator.
12

13 XX. RESERVATION OF RIGHTS OF THE UNITED STATES

14 A. Notwithstanding compliance with the terms of this Con-
15 sent Decree, including, the termination and satisfaction of the
16 conditions of this Consent Decree under the provisions of Section
17 XXXVIII ("TERMINATION AND SATISFACTION"), Burr-Brown is not
18 released from liability for any actions beyond the terms of this
19 Consent Decree. Burr-Brown waives the provisions of Section
20 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2). Except as provided
21 in Section XXIX ("COVENANT NOT TO SUE"), EPA reserves the right
22 to take any enforcement action pursuant to CERCLA and/or any
23 other legal authority, including the right to seek injunctive
24 relief, monetary penalties, and punitive damages for any civil or
25 criminal violation of law or this Consent Decree.
26

1 B. The United States expressly reserves all rights and
2 defenses that it may have, including its right both to disapprove
3 of work performed by Burr-Brown and to request that Burr-Brown
4 perform tasks in addition to those detailed in the Remedial Ac-
5 tion Work Plan, as provided in this Consent Decree. The United
6 States reserves the right to undertake removal actions and/or
7 remedial actions at any time. Except as provided in Section
8 XXIX ("COVENANT NOT TO SUE") the United States reserves the right
9 to seek reimbursement from Burr-Brown for such costs incurred by
10 the United States.

11
12 XXI. RESERVATION OF RIGHTS AND DENIAL OF LIABILITY BY BURR-BROWN

13 A. Except as expressly provided herein, nothing in this
14 Consent Decree shall constitute or be construed as a release of
15 any claim, cause of action, or demand in law or equity which
16 Burr-Brown may have against any person, entity, governmental
17 agency, state or local government, firm, partnership, or corpora-
18 tion ("person") for any liability arising out of or relating in
19 any way to the generation, storage, treatment, handling,
20 transportation, release, or disposal of any hazardous substance,
21 pollutant, or contaminant, or any hazardous or solid waste, found
22 at, taken to, or taken from the Site or to the ownership and/or
23 operation of the Site.

24 B. Except as expressly provided herein, Burr-Brown reserves
25 all legal and equitable rights, including rights of contribution
26 and defenses that it may have under this Consent Decree, CERCLA,

1 or any other legal authority. This reservation of rights applies
2 to actions and defenses assertable by Burr-Brown against the EPA
3 or any other person or governmental entity.

4 C. Notwithstanding the granting of consent under Section I
5 ("JURISDICTION"), the entering into of this Consent Decree, and
6 the taking of any action under it, Burr-Brown does not admit any
7 allegations contained herein, nor does Burr-Brown admit liability
8 for any purpose or admit any issues of law or fact or any respon-
9 sibility for the alleged release or threat of release of any haz-
10 ardous substance into the environment. Payments made by Burr-
11 Brown to conduct the Remedial Action or otherwise comply with the
12 requirements of this Consent Decree shall not be deemed a fine,
13 penalty, or monetary sanction.

14 D. It is the intent of the parties that this Consent Decree
15 shall not be used in any judicial or administrative proceeding or
16 in any other manner against Burr-Brown for any purpose other than
17 in proceedings by the parties hereto to enforce the terms of this
18 Consent Decree; provided, however, nothing herein shall preclude
19 Burr-Brown from using this Consent Decree or the fact of its
20 entry in a proceeding against any person not a party to this Con-
21 sent Decree for contribution or for the recovery of costs ex-
22 pended in complying with this Consent Decree.

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B. For untimely submittal or substantially deficient submittal of the deliverables listed below, Burr-Brown shall pay the following stipulated penalties:

Well Field Design/Data Analysis

70% Design

Start-up O & M and Monitoring Plan

Final System Construction

Long-Term O & M and Monitoring Plan

C. For untimely submittal or substantially deficient submittal of the deliverables listed below, Burr-Brown shall pay the following stipulated penalties: .

1 Deliverable

2 Construction Phase Sample Plan, Contract Laboratory Manual,
3 and Final QA/QC Plan

4 Final Design

5 Official Calibration and Start-up Statement

7 Period of Non-compliance

Penalty Per Violation Per Day

8 1st through 14th calendar day \$5,000

9 15th through 30th calendar day 10,000

10 31st calendar day and beyond 20,000

11
12 D. For failure to comply with any requirements of this Con-
13 sent Decree not specified in paragraphs A, B, or C above, Burr-
14 Brown shall pay the stipulated penalties set out in paragraph B
15 above.

16 E. Stipulated Penalties for failure to perform any require-
17 ment of this Consent Decree for which a deadline is specified
18 shall begin to accrue on the first day after the deadline. Any
19 other violation of this Consent Decree shall begin to accrue on
20 the first day after Burr-Brown receives notice from EPA of such
21 violations.

22 F. Stipulated penalties under this paragraph shall be
23 paid by certified check payable to the Hazardous Substance Super-
24 fund and shall be paid by the 15th day of the month following the
25 month in which the violation occurred or, when the Dispute
26 Resolution provision of Section XXIII ("DISPUTE RESOLUTION") have

1 been invoked, within thirty (30) days of a ruling by the Court on
2 the dispute. Failure to timely pay a stipulated penalty is an
3 additional violation of the Decree subject to stipulated
4 penalties. A copy of the check and the letter forwarding the
5 check, including a brief description of the non-compliance, shall
6 be submitted to the United States in accordance with Section XIX
7 ("REIMBURSEMENT OF COSTS"), herein.

8 G. The stipulated penalties set forth above shall be
9 in addition to any other remedies or sanctions available to the
10 United States by reason of Burr-Brown's failure to comply with
11 the requirements of this Consent Decree.

12
13 XXIII. DISPUTE RESOLUTION

14 In the event that the parties cannot resolve any dispute
15 arising under this Decree, the interpretation advanced by EPA
16 shall be considered binding unless Burr-Brown invokes the Dispute
17 Resolution provisions of this Section. The Dispute Resolution
18 provisions of this Section shall only be available to Burr-Brown
19 for those disputed matters for which this Consent Decree specifi-
20 cally provides for dispute resolution. However, Burr-Brown may
21 invoke Dispute Resolution in any case that may result in stipu-
22 lated penalties under Section XXII ("STIPULATED PENALTIES") ex-
23 cept for stipulated penalties assessed for failure to comply with
24 the monthly progress reports requirements in Paragraph VIII.A.
25 Burr-Brown's decision to invoke dispute resolution shall not con-
26 stitute a force majeure under Section XXIV herein.

1 If Burr-Brown raises an objection to any EPA notice of dis-
2 approval, determination of inadequacy, or other decision made
3 pursuant to this Consent Decree, or if EPA and Burr-Brown other-
4 wise reach an impasse with regard to the requirements of this
5 Consent Decree, Burr-Brown shall orally notify EPA immediately of
6 its objections. Burr-Brown shall subsequently provide written
7 notice within seven (7) calendar days of oral notification.

8 Any dispute that arises with respect to the meaning or
9 application of this Consent Decree shall in the first instance be
10 the subject of informal negotiations between EPA and Burr-Brown.
11 Such period of informal negotiations shall not extend beyond 15
12 days, unless the parties agree otherwise.

13 At the termination of unsuccessful informal negotiations,
14 should Burr-Brown choose not to follow the United States' posi-
15 tion, Burr-Brown shall file with the Court a petition which shall
16 describe the nature of the dispute and include a proposal for its
17 resolution. Burr-Brown may not file such a petition until infor-
18 mal negotiations are completed. The filing of a petition asking
19 the Court to resolve a dispute shall not of itself postpone the
20 deadlines for Burr-Brown to meet its obligations under this
21 Decree with respect to the disputed issue, or stay the provisions
22 of Section XXII ("STIPULATED PENALTIES") except that the United
23 States will not demand payment of penalties accrued until comple-
24 tion of the Dispute Resolution process.

1 The United States shall have 30 days to respond to the
2 petition. In any dispute relating to the selection, technique,
3 or adequacy of any aspect of the Remedial Action and in any other
4 dispute subject to CERCLA § 113(j)(2), 42 U.S.C. § 9613(j)(2), in
5 considering Burr-Brown's objections, the Court shall uphold EPA's
6 decision unless Burr-Brown can demonstrate, on the administrative
7 record, that EPA's decision was arbitrary and capricious or
8 otherwise not in accordance with law. In other disputes, except
9 as specified above, the appropriate standard of judicial review
10 and scope of materials to be considered by the Court shall be
11 determined by the Court. If the Court finds that Burr-Brown has
12 satisfied its burden and therefore is the prevailing party in the
13 dispute, Burr-Brown shall pay no stipulated penalties for failing
14 to timely perform the disputed actions. This shall not excuse
15 penalties for failure to perform actions not in dispute except to
16 the extent Burr-Brown can show that it was impracticable for
17 Burr-Brown to perform those actions pending resolution of the
18 dispute. If the Court does not find that Burr-Brown has
19 satisfied its burden, Burr-Brown shall transmit payment of all
20 penalties which have accrued during the dispute, plus interest at
21 the rate specified in 42 U.S.C. § 9607 to the Hazardous Substance
22 Superfund within 15 working days of resolution of the dispute.

1 XXIV. FORCE MAJEURE

2 Burr-Brown shall perform all the requirements of this Con-
3 sent Decree according to the time limits set out in the Consent
4 Decree and referenced supporting documents or any modification
5 thereto unless their performance is prevented or delayed by
6 events which constitute a force majeure.

7 For the purpose of this Decree, a force majeure is defined
8 as any event arising from causes beyond the control of Burr-Brown
9 or its contractors, subcontractors or consultants which delays or
10 prevents performance. Neither economic hardship nor increased
11 costs shall be considered an event beyond the control of Burr-
12 Brown, its contractors, subcontractors or consultants and shall
13 not trigger the force majeure clause. A force majeure may in-
14 clude but is not limited to the following circumstances:

15 1. acts of God, fires, natural disasters, riots,
16 wars, unavoidable and unforeseeable labor strikes, adverse
17 weather conditions, unforeseeable inability to obtain necessary
18 permits, licenses and certifications despite timely application,
19 unforeseeable inability to obtain necessary equipment, and emer-
20 gency conditions requiring work stoppage;

21 2. any delay caused by changes in the requirements
22 of this Consent Decree due to revisions or amendments to EPA
23 guidance or the NCP;

24 3. any other cause beyond the control of Burr-Brown
25 provided, however, that increases in the cost of performance of
26 the Remedial Action or change in economic circumstances shall not

1 excuse such performance nor affect the applicability of the
2 penalty provisions and/or other sanctions which are provided for
3 under this Decree.

4 C. Burr-Brown has the burden of proving that any delay is
5 or will be caused by events beyond its control and that the dura-
6 tion of the delay requested is necessary.

7 D. In the event of a force majeure, the time for perfor-
8 mance of the activity delayed by the force majeure shall be ex-
9 tended for the minimum time necessary to allow completion of the
10 delayed activity but in no event longer than the time period of
11 the delay attributable to the force majeure. The time for per-
12 formance of any activity dependent on the delayed activity shall
13 be similarly extended. EPA shall determine whether requirements
14 are to be delayed and the time period granted for any delay.
15 Burr-Brown shall adopt all practicable measures to avoid or mini-
16 mize any delay caused by a force majeure.

17 E. In the event Burr-Brown discovers a force majeure,
18 Burr-Brown shall orally notify EPA's Project Coordinator, or his
19 designee, immediately (no later than 48 hours after Burr-Brown
20 becomes aware of the occurrence of the force majeure) and shall
21 notify EPA in writing, no later than seven (7) calendar days
22 after discovery of a force majeure, of the anticipated length and
23 cause of the delay. In the event that EPA and Burr-Brown cannot
24 agree that any delay in the achievement has been or will be
25
26

1 caused by circumstances beyond the control of Burr-Brown or as to
2 the appropriate length of the delay, the dispute shall be
3 resolved in accordance with Section XXIII ("DISPUTE RESOLUTION").
4

5 XXV. FORM OF NOTICE

6 The original or a copy of all communications between Burr-
7 Brown, the Contractor(s) and EPA shall be sent to at least Burr-
8 Brown and EPA.

9 When notification to or communication with the United
10 States, EPA or Burr-Brown is required by the terms of this Con-
11 sent Decree, it shall be in writing, postage prepaid, and ad-
12 dressed as follows:

13 As to the United States:

14 Chief
15 Environmental Enforcement Section
16 Land and Natural Resources Division
17 Department of Justice
18 10th and Pennsylvania Avenue, N.W.
19 Washington, D.C. 20530

20 As to EPA:

21 EPA Project Coordinator - TAA Site
22 State Programs Section (T-4-1)
23 U.S. Environmental Protection Agency
24 215 Fremont Street
25 San Francisco, CA 94105

26 As to Burr-Brown:

Edward C. Hagen
Vice President/Director
Environmental Control Programs
Burr-Brown Corporation
P.O. Box 11400
Tucson, AZ 85734

1 Any submission to EPA for approval made pursuant to this
2 Decree shall be made to the addresses shown above and shall be
3 made by overnight mail or some equivalent delivery service.
4

5 XXVI. MODIFICATION

6 Except as expressly provided herein, there shall be no
7 modification of this Consent Decree without written approval of
8 all parties to this Decree and entry by the Court.
9

10 XXVII. ADMISSIBILITY OF DATA

11 In the event that the Court is called upon to resolve a dis-
12 pute concerning implementation of this Consent Decree, the
13 parties waive any evidentiary objection to the admissibility into
14 evidence of data gathered, generated, or evaluated pursuant to,
15 and in compliance, with this Decree.
16

17 XXVIII. EFFECTIVE DATE

18 This Consent Decree is effective upon the date of its entry
19 by the Court.
20

21 XXIX. COVENANT NOT TO SUE

22 A. Except as provided herein, upon termination and satis-
23 faction of the conditions of this Consent Decree under the provi-
24 sions of Section XXXVIII ("TERMINATION AND SATISFACTION"), the
25 United States covenants not to sue or take administrative action
26 against Burr-Brown, under the provisions of CERCLA, with regard

1 to the Remedial Action which is the subject of this Consent
2 Decree. This Section is not, and shall not be construed as, a
3 covenant not to sue Burr-Brown if it does not perform or make all
4 payments required by this Consent Decree. Nor does this Section
5 apply to any other person or entity not a party to this Consent
6 Decree. This covenant not to sue does not apply to any removal
7 or remedial actions taken at the Site beyond those actions re-
8 quired by the ROD or this Consent Decree.

9 B. Burr-Brown hereby releases and covenants not to sue the
10 United States, including any and all departments, agencies, of-
11 ficers, administrators, and representatives thereof, for any
12 claim, counter-claim, or cross-claim asserted, or that could have
13 been asserted until the effective date of this Consent Decree or
14 arising out of or relating to the Site, except for any liability
15 arising under Section 107 or 113 of CERCLA relating to the Site
16 for any federal entity that has not resolved its liability for
17 Remedial Action under the provisions of this Consent Decree or
18 its equivalent.

19 C. Burr-Brown is expressly not released from, and the
20 provisions of Paragraph A of this Section shall not apply to, any
21 matter not expressly addressed by this Consent Decree, including
22 the following claims:

23 1. Claims based on a failure by Burr-Brown to meet the
24 requirements of this Decree;

25 2. Any other claims of the United States for any other
26

1 costs or actions necessary to the Site which are not expressly
2 and exclusively undertaken pursuant to the terms of this Consent
3 Decree;

4 3. Claims based on Burr-Brown's liability arising
5 from the past, present, or future disposal of hazardous sub-
6 stances outside of the Site.

7 4. Claims for costs incurred by the United States as a
8 result of the failure of Burr-Brown to meet the requirements of
9 Section VII of this Decree ("WORK TO BE PERFORMED") or the ROD;

10 5. Any claim or demand for damage to federal property
11 located any place that the Remedial Actions are being performed;

12 6. Claims based on criminal liability;

13 7. Claims based on liability for damage to natural
14 resources as defined in CERCLA;

15 8. Claims based on liability for hazardous substances
16 removed from the Site;

17 9. Claims based on liability for future monitoring or
18 oversight expenses incurred by the United States except as those
19 expenses are recovered by the United States pursuant to Section
20 XIX, herein ("REIMBURSEMENT OF COSTS"); or

21 10. Liability for any violations of Federal or State law
22 which occur during implementation of the Remedial Action.

23 D. Notwithstanding any other provision of this Consent
24 Decree,

25 (1) the United States reserves the right to institute
26

1 proceedings in this action or in a new action or to issue an Or-
2 der seeking to compel Burr-Brown to perform any additional
3 response work at or emanating from the Site and

4 (2) the United States reserves the right to institute
5 proceedings in this action or in a new action seeking to reim-
6 burse the United States for response costs and to reimburse the
7 State for its matching share of any response action undertaken
8 under CERCLA, relating to the Site if:

9 (a) Prior to U.S. EPA certification of completion
10 of the Remedial Action concerning the Site,

11 i. conditions at the Site, previously unknown
12 to the United States, are discovered after
13 the entry of this Consent Decree, or

14 ii. information is received, in whole or in
15 part, after the entry of this Consent
16 Decree,

17 and these previously unknown conditions or this
18 information indicates that the Remedial Action
19 is not protective of human health and the
20 environment; or

21 (b) Subsequent to U.S. EPA certification of comple-
22 tion of the Remedial Action concerning the
23 Site,

24 i. conditions at the Site, previously unknown
25 to the United States, are discovered after
26 the certification of completion by EPA, or

1 ii. information is received, in whole or in
2 part, after the certification of completion
3 by EPA, and these previously unknown condi-
4 tions or this information indicates that
5 the Remedial Action is not protective of
6 human health and the environment.

7 E. Notwithstanding any other provision in this Consent
8 Decree, this covenant not to sue shall not relieve Burr-Brown of
9 its obligation to meet and maintain compliance with the require-
10 ments set forth in this Consent Decree, specifically including
11 the conditions set forth in the ROD, which is incorporated
12 herein. The United States reserves all its rights to take
13 response actions at the Site, including the right to take
14 response action in the event of a breach of the terms of this
15 Consent Decree and to seek recovery of costs which: 1) result
16 from such a breach; 2) relate to any portion of the work funded
17 or performed by the United States; or 3) are enforcement costs
18 incurred by the United States associated with the Site.

19 F. Nothing in this Consent Decree shall constitute or be
20 construed as a release or a covenant not to sue regarding any
21 claim or cause of action against any person firm, trust, joint
22 venture, partnership, corporation or other entity not a signatory
23 to this Consent Decree for any liability it may have arising out
24 of or relating to the Site.

25 G. The parties to this Consent Decree agree that the United
26 States shall be under no obligation to assist Burr-Brown in

1 any way in defending against suits for contribution brought
2 against Burr-Brown which allege liability for matters covered by
3 this covenant not to sue by persons or entities that have not en-
4 tered into this settlement.

5 H. Burr-Brown reserves all rights, defenses, claims, causes
6 of action or counterclaims which it may have at law or equity to
7 defend against, oppose or contest any claim brought by the United
8 States pursuant to Paragraph E above.

9
10 XXX. CONTRIBUTION PROTECTION

11 A. EPA acknowledges and determines that, upon termination
12 of this Consent Decree pursuant to Section XXXVIII ("TERMINATION
13 AND SATISFACTION") hereof, Burr-Brown shall have resolved its
14 liability to the United States, within the meaning of CERCLA Sec-
15 tion 113(f)(2), 42 U.S.C. § 9613(f)(2), for the Remedial Action
16 and for all past response costs, including interest accrued
17 thereon, incurred by the United States for the Site up to
18 August 1, 1988. Burr-Brown shall have the protection pursuant to
19 CERCLA Section 113(f)(2) against claims of contribution.

20
21 XXXI. COMMUNITY RELATIONS

22 Burr-Brown shall cooperate with EPA and the State in provid-
23 ing information to the public. As requested by EPA or the State,
24 Burr-Brown shall participate in the preparation of all appro-
25
26

1 priate information disseminated to the public and in public
2 meetings(s) which may be held or sponsored by EPA or the State to
3 explain activities at or concerning the Site.
4

5 XXXII. PUBLIC PARTICIPATION

6 The United States shall publish a notice of the availability
7 for review of and comment on this Consent Decree upon its lodging
8 with the United States District Court as a proposed settlement in
9 this matter.

10 The United States will provide persons who are not parties
11 to the proposed settlement with the opportunity to file written
12 comments during at least a thirty (30) day period following such
13 notice. In addition, EPA intends to hold an informal public
14 meeting in Tucson, Arizona during this period to receive either
15 written or oral comments. The United States will file with the
16 Court a copy of any comments received and the responses of the
17 United States to such comments.

18 After the closing of the public comment period, the United
19 States will review such comments and determine whether the com-
20 ments disclose facts or considerations which indicate that the
21 proposed judgment is inappropriate, improper or inadequate, and
22 the consent should therefore be withdrawn. Should consent be
23 withdrawn, the United States shall inform the other parties as to
24 the basis for the withdrawal and any modifications necessary for
25 consent to a settlement.
26

1 XXXIII. NOTICE TO THE STATE

2 EPA has notified the State of Arizona pursuant to the re-
3 quirements of Section 106(a) of CERCLA.
4

5 XXXIV. CONSISTENCY WITH THE NCP

6 The United States and Burr-Brown agree that the Remedial Ac-
7 tion, if performed in full accordance with the requirements of
8 this Consent Decree, is consistent with the provisions of the Na-
9 tional Contingency Plan, pursuant to Section 105 of CERCLA, as
10 amended, 42 U.S.C. § 9605.
11

12 XXXV. LIABILITY

13 Burr-Brown shall indemnify the United States and hold the
14 United States harmless for any claims arising from any injuries
15 or damages to persons or property resulting from any acts or
16 omissions of Burr-Brown its officers, employees, agents,
17 receivers, trustees, successors, assigns, contractors, sub-
18 contractors, or any other person acting on their behalf in carry-
19 ing out any activities pursuant to the terms of this Consent
20 Decree. This indemnification does not extend to that portion of
21 any such claim or cause of action attributable to the negligent,
22 wanton or willful misconduct of the United States, its agents,
23 employees, contractors, or representatives in carrying out the
24 activities at the Site. The United States shall notify Burr-
25 Brown of any such claims or actions within thirty (30) days of
26 receiving notice that such a claim or action has been filed.

1 XXXVI. OTHER CLAIMS

2 With respect to any person, firm, partnership, or corpora-
3 tion not a signatory to this Decree, nothing in this Consent
4 Decree shall constitute or be construed as a covenant not to sue
5 with respect to, or as release from any claim, cause of action,
6 or demand in law or equity. This Consent Decree does not con-
7 stitute a preauthorization of funds under Section 111(a)(2) of
8 CERCLA. In consideration of entry of this Consent Decree, Burr-
9 Brown agrees not to make any claims pursuant to Section 112 or
10 Section 106(b)(2), 42 U.S.C. §§ 9612, 9606(b)(2), or any other
11 provisions of law directly or indirectly against the Hazardous
12 Substances Superfund, or make other claims against the United
13 States for those costs expended in connection with this Consent
14 Decree.

15
16 XXXVII. CONTINUING JURISDICTION

17 The Court specifically retains jurisdiction over both the
18 subject matter of and the Parties to this action for the duration
19 of this Consent Decree for the purposes of issuing such further
20 orders or directions as may be necessary or appropriate to con-
21 strue, implement, modify, enforce, terminate, or reinstate the
22 terms of this Consent Decree or for any further relief as the in-
23 terest of justice may require.

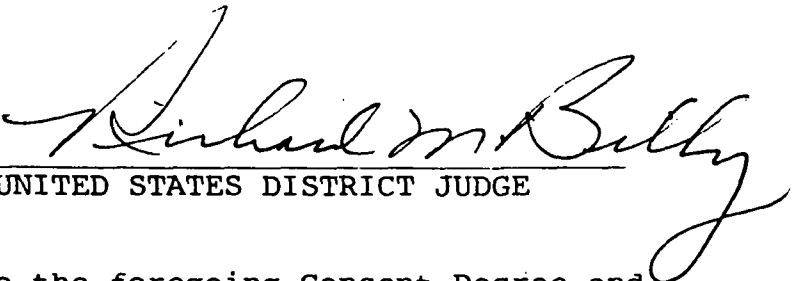
1 XXXVIII. TERMINATION AND SATISFACTION

2 Upon completion of the Remedial Action, as described in
3 Section 3.5 of Appendix B, or upon occurrence of an event ter-
4 minating Burr-Brown's obligations, as described in Section VII
5 ("WORK TO BE PERFORMED"), Burr-Brown shall submit to EPA a writ-
6 ten certification that the Remedial Action has been completed in
7 accordance and in full compliance, or that it has otherwise
8 satisfied its obligations in accordance and in full compliance,
9 with this Decree. Within sixty (60) days of receipt of such cer-
10 tification, EPA shall approve or disapprove the certification.
11 The provisions of this Decree, other than Section XVII
12 ("RETENTION OF RECORDS") shall be deemed satisfied upon Burr-
13 Brown's receipt of such written approval from EPA; provided that
14 termination of this Decree shall not alter the provisions of Sec-
15 tion XX ("RESERVATION OF RIGHTS OF THE UNITED STATES"), Section
16 XXI ("RESERVATION OF RIGHTS AND DENIAL OF LIABILITY BY BURR-
17 BROWN"), Section XXIX ("COVENANT NOT TO SUE") Section XXX
18 ("CONTRIBUTION PROTECTION") and such other continuing rights and
19 obligations of both parties under this Decree.

20
21 XXXIX. SECTION HEADINGS


22 The section headings set forth in this Decree and its Table
23 of Contents are included for convenience of reference only and
24 shall be disregarded in the construction and interpretation of
25 any of the provisions of this Decree.

1 This Consent Decree is entered on this _____ day of
2 _____, 1989.

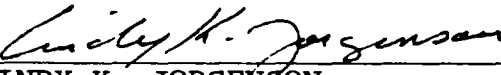
3
4
5 
6 UNITED STATES DISTRICT JUDGE

7 The undersigned agree to the foregoing Consent Decree and
8 agree that, upon filing of a motion for entry by the United
9 States, the Consent Decree may be entered.

10 UNITED STATES OF AMERICA
11 Plaintiff

12
13 Dated: September 29, 1989 By: 
14 RICHARD B. STEWART
15 Assistant Attorney General
16 Land and Natural Resources Division
17 United States Department of Justice
18 Washington, D.C. 20530

19
20 STEPHEN B. MCNAMEE
21 United States Attorney
22 District of Arizona

23
24 Dated: 10/16/89 By: 
25 CINDY K. JORGENSEN
26 Assistant U.S. Attorney
Acapulco Building, Suite 310
110 S. Church Street
Tucson, AZ 85701

1
2
3 Dated: 8/23/89

By: Robert R. Homiak
ROBERT R. HOMIAK
Environmental Enforcement Section
Land and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

7
8 Dated: 7.11.89

By: John Wise
DANIEL W. MCGOVERN *for*
Regional Administrator
U.S. Environmental Protection Agency
Region IX
215 Fremont Street
San Francisco, CA 94105

12
13 Dated: 7/10/89

By: Kathleen H. Johnson
KATHLEEN H. JOHNSON
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
215 Fremont Street
San Francisco, CA 94105

BURR-BROWN RESEARCH CORPORATION
Defendant

Dated: 6/27/89

By: James J. Burns

JAMES J. BURNS
President & CEO
Burr-Brown Corporation
P.O. Box 11400
Tucson, AZ 85734

Dated: 6/26/89

By: Edward C. Hagen

EDWARD C. HAGEN
Vice President/Director
Environmental Control Programs
Burr-Brown Corporation
P.O. Box 11400
Tucson, AZ 85734

Dated: 6/23/89

By: Roger K. Ferland

ROGER K. FERLAND
Attorney for Defendant
Streich, Land, Weeks & Cardon
2100 First Interstate Bank Plaza
Phoenix, AZ 85003-1897